

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

In re:)	CASE NO: 05-59305
David N. Dolton)	Chapter 7
)	
Debtor(s).)	Judge Marilyn Shea-Stonum
)	
Harold A. Corzin, Trustee)	ADVERSARY NO: 09-5109
Plaintiff)	
v.)	
David N. Dolton)	
Defendant.)	<u>ANSWER WITH</u> <u>COUNTERCLAIM ANNEXED</u>

ANSWER OF DEFENDANT, DAVID N. DOLTON

Now comes the above-captioned defendant, by and through the undersigned counsel, who states the following as his answer to the amended complaint filed herein:

1. The defendant David N. Dolton admits those allegations set forth in the complaint in those paragraphs of the complaint designated as numbers one (1), two (2) and three (3).

2. The defendant admits that the plaintiff previously filed a complaint to deny the debtor his general discharge in an adversary proceeding designated as case number 06-

5101 as alleged in the paragraph of the complaint designated as number four (4), but denies every other allegation made by the plaintiff in this paragraph of the complaint.

3. The defendant denies each and every other allegation made by the plaintiff in his complaint not specifically admitted to herein.

AFFIRMATIVE DEFENSES

4. The defendant hereby restates re-alleges each and every averment set forth above as if fully rewritten herein.

5. The defendant states that the plaintiff is barred under the doctrines of issue preclusion, res judicata, judicial estoppel, collateral estoppel and estoppel in pais and the law of the case from asserting in his present complaint that the defendant may be denied in this action his general discharge pursuant to 11 U.S.C. Sec. 727 while simultaneously relying on a judgment entered in a prior adversary proceeding number 06-5101 wherein it was ordered that the debtor was entitled to a general discharge pursuant to that statute.

6. The defendant states that the present complaint is barred under the doctrine of laches.

7. The defendant states that the judgment in adversary case number 06-5101 relied upon by the plaintiff in his complaint was obtained by the plaintiff through a fraud on the Court perpetrated by the plaintiff as the plaintiff submitted that judgment to the Court representing to the Court that it was agreed-to by the defendant whereas the defendant never consented to the terms set forth in the judgment entry, including but not limited to anything in the judgment entry that might be construed as the defendant's

consent to a "balloon payment" as referred to by the plaintiff in his complaint.

WHEREFORE, the defendant prays for the entry of an order dismissing the within complaint at the plaintiff's costs, granting him the relief demanded in the counterclaim set forth below and granting to the defendant such other and further relief as may be equitable and just.

/s/ Robert M. Whittington, Jr.

Robert M. Whittington, Jr. 0007851
Attorney for the Defendant, David N. Dolton
Elk, Elk & Whittington
159 S. Main St.
Akron, OH 44308
Voice (330) 384 8484
Fax (330) 384 8953
E-mail elkwhitt@neo.rr.com

COUNTERCLAIM

Now comes David N. Dolton, who is the defendant in the above-styled adversary proceeding, who states the following:

1. Jurisdiction in this case is based upon 28 U.S.C. Sec. 1334, 28 U.S.C. Sec. 157(a) and (b) and Rule 7013, Fed.R.Bankr.P. This is a core proceeding pursuant to 28 U.S.C. Sec. 157.
2. The defendant is the debtor in a bankruptcy case pending in this Court designated as case number 05-59305.
3. The plaintiff is the chapter 7 bankruptcy trustee appointed in this case.

4. The plaintiff previously filed in this Court against the defendant an adversary action to deny the defendant his discharge under 11 U.S.C. Sec. 727. This adversary action was designated as case number 06-5101.

5. The plaintiff and or his counsel prepared and submitted to the Court in that previous adversary action an “order authorizing compromise of controversy” which was entered in that case as docket no. 29 on December 10, 2007.

6. The plaintiff represented to the Court in that order, which he and or his counsel prepared and submitted to the Court, that the defendant had no objection to the terms set forth in order when the plaintiff did, in fact, know or reasonably should have known that the defendant did not agree to the terms of that order.

7. The December 10, 2007 order was neither approved nor signed by either the defendant or by counsel for the defendant.

8. The plaintiff’s submission of the December 10, 2007 order to the Court, representing to the Court that this order was agreed-to by the defendant while in fact it was not agreed-to by the defendant, constitutes a fraud on the Court.

9. Armed with the December 10, 2007 order, the plaintiff has threatened, demanded and received payment from the defendant to which the plaintiff was not entitled.

10. The defendant therefore is entitled to an order vacating this December 10, 2007 order and for an order directing that the plaintiff pay over to the defendant any and all money paid by the defendant to the plaintiff pursuant to the terms of this order.

WHEREFORE, the defendant prays for the entry of an order finding that the

plaintiff's submission of the December 10, 2007 order referred to above be declared to be a fraud upon the Court, that this order be vacated and stricken, that the plaintiff be ordered to pay over to the defendant any and all funds paid to him by the defendant pursuant to that order and that the defendant be granted such other and further relief as may be equitable and just.

/s/ Robert M. Whittington, Jr.

Robert M. Whittington, Jr. 0007851
Attorney for the Defendant, David N. Dolton
Elk, Elk & Whittington
159 S. Main St.
Akron, OH 44308
Voice (330) 384 8484
Fax (330) 384 8953
E-mail elkwhitt@neo.rr.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing answer and counterclaim was sent by certified U.S. Mail, postage prepaid, this 12th day of February, 2010 to Harold A. Corzin, trustee, 304 N. Cleveland-Massillon Rd., Akron, OH 44333 and by electronic ECF notice to the U.S. Trustee.

/s/ Robert M. Whittington, Jr.